

**REMARKS / ARGUMENTS**

This Amendment is submitted in full response to the outstanding Office Action dated September 17, 2004 wherein claims 1, 3 through 5, 10 through 14, 16 and 17 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hogan (U.S. Patent No. 4,944,075). In addition, claims 1 and 3 through 18 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thurmond et al (U.S. Patent No. 5,347,262). Also, claim 2 stands rejected under 35 U.S.C. 103(a) as being patentable over either Hogan (075) or Thurmond et al, in view of Weber et al. (U. S. Patent No. 5,613,384).

Applicant also takes note that original claims 1 through 5 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 6 of U.S. Patent No. 6,722,166. In response Applicant submits with this Amendment a Terminal Disclaimer relinquishing the terminal part of any patent issuing on this application which would extend beyond the term of the above-noted patent to the Applicant herein.

**Applicant's Invention:**

As now defined by the claims still remaining in this application, Applicant's invention is directed to a security tag assembly having a housing with separable portions removably connected to one another in an operative position; a connector member structured to connect merchandise to the housing; a locking assembly removably securing the connector member and cooperatively structured to secure the separable portions in the operative position; and an indicator assembly comprising a plurality of indicator structures disposed and structured to indicate tampering with the security tag assembly upon attempted unauthorized perimeter access to the housing.

At least some of the preferred embodiments of the present invention are defined by amended, independent claim 1, wherein the tag assembly further comprises a shield assembly formed of a heat resistant material disposed in at least partially enclosing relation to the locking assembly. Yet additional preferred embodiments are defined by new claims 21 and 22, dependent on amended, independent claim 1, as additionally including an interior housing section having an exterior curved surface disposed adjacent to and in restricting relation to the

corresponding peripheries of the separable portions. As such, the exterior curved surface is disposed and configured to restrict perpendicular access to the connector member by an article inserted between the separable portions, through the corresponding peripheries of the separable portions.

Amended independent claims 12, 16 and 18 more specifically define Applicant's security tag assembly as including the interior housing section having an exterior curved surface being disposed and structured to direct an article inserted between said separable portions into engagement with the indicator assembly comprising a plurality of indicator structures. An indication of tampering with the security tag assembly is thereby provided. Additional recitation as found in these newly amended claims call for the exterior curved surface of the interior housing section structured to extend into an interior of one of said separable portions, so as to restrict radial access of an article extending between said separable portion. Further and more specific claim language appearing in newly submitted claims 19 and 20 call for the exterior curved surface extending over at least the majority of the outer surface area of the interior housing section and even more specifically for

the exterior curved surface to have a substantially convex configuration.

**References of Record:**

In addition to the references to Hogan (075), Thurmond et al. and Weber et al., as specifically applied by the Examiner, Applicant takes note that Hogan (075) includes the disclosure of U.S. Patent No. 4,523,356 to Charlot, Jr. by reference.

Turning first to the outstanding rejection under 35 U.S.C. 103, the Examiner acknowledges that Hogan (075) and Thurmond et al. fails to teach the use of a "heat resistant" shield. Accordingly, the Examiner relies on Weber et al. to teach a security device comprising a shield assembly made from a heat resistant material. It is the Examiner's contention that it would have been obvious to a skilled artisan to provide a heat resistant material for the shield assembly 72 of Hogan (075) or the structure 82 of Thurmond et al. since such a modification would serve to enhance the security of the device. Applicant respectfully disagrees.

Applicant contends that at the time of the inventions disclosed in the Hogan (075) and Thurmond et al. references, the

defeat of anti-theft tags or "ink tags" by utilizing some type of heat source, such as a cigarette lighter, was not anticipated. As a result, neither Hogan (075) nor Thurmond et al contemplated the forming of the shield assembly 72 from a heat resistant material. Applicant respectfully points out that in order to maintain a rejection under 35 U.S.C. 103, it is well established that there must be some suggestion in the Hogan reference itself for the need or requirement of a heat resistant shield. Further, the Examiner is prevented from using hindsight knowledge of Applicant's own invention to suggest such a need or modification.

Weber et al. is directed to a non-analogous art in disclosing a sheathing jacket which covers a steering wheel and which is structured to protect the steering wheel and/or locking mechanism against exposure to an **extreme** heat source such as a "blow torch". Clearly one skilled in the art, absent any suggestion of the need or requirement of the heat resistant shield assembly being required in the Hogan (075) and/or Thurmond references, would not turn to the non-analogous art of a locking assembly for a steering wheel of a vehicle for the structural modification of a heat resistant shield assembly,

without using the hindsight knowledge of the Applicant's invention.

Further, and as set forth above, additional claims dependent on independent claim 1 recite numerous structural features which are not taught or even suggested in the references of record. Such additionally recited features include the provision of an interior housing section having an exterior curved surface cooperatively positioned relative to corresponding peripheries of the separable portions to restrict access and unauthorized separation thereof. The structural features are clearly not found in Hogan (075), Thurmond et al or Weber et al. whether considered either singularly or in combination with one another.

Turning to the above noted outstanding rejection under 35 U.S.C. 102 Applicant's invention has been more specifically defined by the amendment of claims 12, 16 and 18. More specifically, each of these claims recites a security tag assembly having the above noted features and additionally including an interior housing section having an exterior curved surface. The exterior curved surface is disposed and structured to restrict or otherwise direct an article inserted between the

separable portions, such as through corresponding peripheries thereof, out of perpendicular engagement with the connector member and/or into direct engagement with the indicator assembly, including the plurality of indicator structures. Even more specific structural features of Applicant's invention are defined in newly submitted claims 19 and 20. As recited, the exterior curved surface extends over at least a majority of the outer surface area of the interior housing section and further wherein the exterior curved surface is substantially convex.

In support of the outstanding rejection under 35 U.S.C. 102(b) the Examiner's specifically applies Hogan (075) and Thurmond et al. More specifically, the Examiner contends that Hogan (075) discloses a side portion of housing 12 that is upwardly sloped towards the connector 14 so as to direct an unauthorized object into the ampules. Also when applying the Thurmond et al. reference, the Examiner contends that the upper portion of cover 58 is sloped, as at 61, towards the connector 14 so as to direct an unauthorized object into the ampules and away from the perpendicular access to the connector 14. Applicant respectfully disagrees with the Examiner's interpretation of these two references.

Hogan (075) does disclose an **exterior** side portion of housing 12, which is structurally and operatively distinguishable from an interior housing section having an exterior curved surface, wherein the exterior curved surface is disposed adjacent corresponding peripheries of the separable portions and disposed, dimensioned and configured to restrict access of an article through the peripheries and/or between the separable portions. A review of the drawings and specification of Hogan (075) as well as the referenced Charlot patent, indicates that there is no equivalent or anticipatory structure to an interior housing section having an exterior curved surface disposed adjacent and/or in restricting relation to corresponding peripheries of separable portions of the tag assembly so as to prevent access by a protruding article.

Similarly, the plastic cover 58 of Thurmond et al. does not include an exterior curved surface which is disposed adjacent to and/or in restricting relation to corresponding peripheries of separable portions particularly wherein the exterior curved surface extends over at least the majority of the outer surface area of an interior housing section as well as into recessed relation to at least one of the separable portions.



**Conclusion:**

Based on the above, Applicant respectfully contends that the claims now present in the application are clearly distinguishable by reciting subject matter which is not found in the disclosure in the Hogan (075), Thurmond et al. and/or Weber et al. references of record whether considered either singularly or in combination with one another. Therefore based on the content of this amendment, the Examiner is respectfully requested to review her position and favorable action is solicited.

In the event that any fee may be required by the filing of this paper, the Commissioner is hereby authorized to charge any fees and/or credit to our **Deposit Account No. 13-1227.**

Respectfully Submitted,

MALLOY & MALLOY, P.A.  
Attorneys for Applicant  
2800 S.W. 3<sup>rd</sup> Avenue  
Historic Coral Way  
Miami, Florida 33129  
(305) 858-8000

By: 

Peter A. Matos  
Reg. No. 37,884

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**Amendments to the Drawings:**

Included herewith is a single sheet of drawings comprising Figures 8 through 10 which is to replace the single sheet of drawings comprising Figures 8 through 10, as originally filed.

Attachment:     1 Replacement Sheet  
                  1 Annotated Sheet Showing Changes



3/3

Figure 8—  
 Change reference  
 numeral "52" to  
 56 and add  
 reference numeral  
 56'

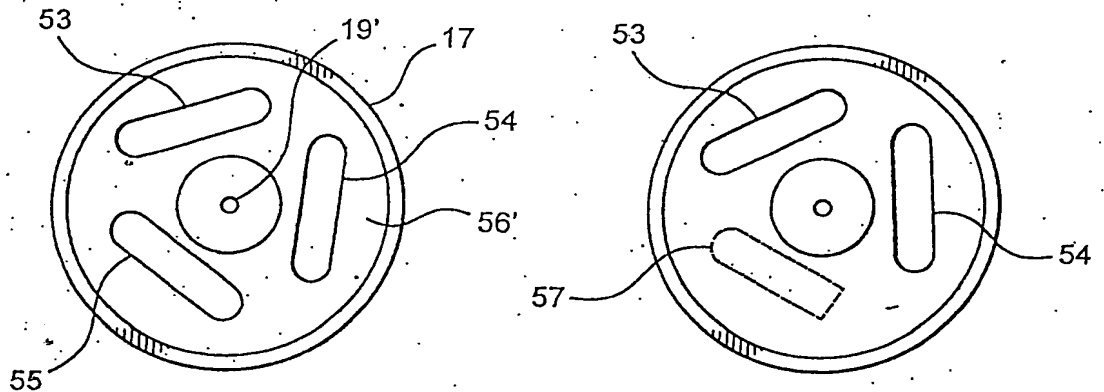
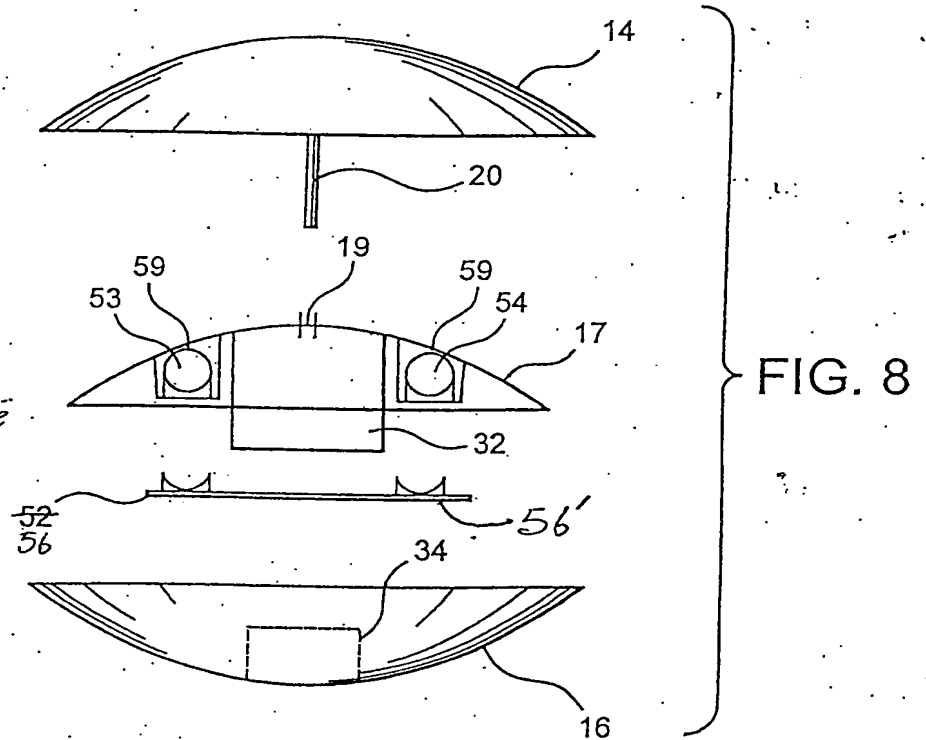


FIG. 9

FIG. 9A

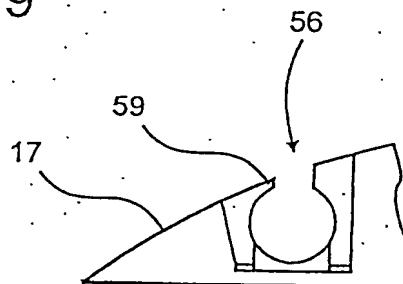


FIG. 10